M.

Sectt. II–27—100,000—21-5-52.

1948

Finance. (~~1958~~) Department.

Ms SERIES.

G.O. No. 1059

Dated 16.11.48

[Despatch Abstract.]

Sectt. - Model forms of agreement for contract officers - Amendment - Issued.

GOVERNMENT OF MADRAS
ABSTRACT

Establishment - Model forms of agreement for Contract officers – Amendment - Issued.

FINANCE DEPARTMENT

G.O.Ms. No. 1059 DATED 16.11.48
Read the following

G.O.No.196 Finance dated 28-5-1937.

ORDER

The following amendment to the revised model forms of agreement for contract officers circulated with the G.O. cited are issued.

After clause 4 of the model form in Annexures I and III, the following clause shall be inserted, namely:-

"4.A. If due to the misconduct or negligence of the party of the first part, the Government sustain any less or damage, such less or damage shall be made good by the party of the first part."

(By Order of His Excellency the Governor)

P.Crombie,
Deputy Secretary to Government.

To

The Accountant General, Madras.
All Departments of Secretariat (all sections)
The Governor's Secretariat.
All Heads of Department.

(True copy)

EXTRACT NOTES.

of file bearing no 16243 AI/47

Development.

3. (i) Dr.B.Viswanath, then Director of Agriculture He was Director of Agriculture on contract and his contract terminated on 14-4-47. He is a pensioner of the Government of India and not of this Government. Departmentally we do not seem to have hold on him now. It is not known then whether any other action is possible in his case.

N.M.
18.6.48

** ** ** ** ** **

Finance.

I do not think that there is sufficient material on which a civil suit can be filed against the Director of Agriculture with any reasonable chance of success. He may pleed that it was primarily for the personal Assistant to deal with the details regarding tenders, ~~contae~~ contracts etc. and it would be very difficult to make out that he was so grossly negligent as to be made reasponsible for the loss in a Civil Court. However this is a matter in which the advice of Legal may be followed.

T.N.S.R.
28.6.48.

** ** **

Legal.

This Department may agree with the remarks of the Finance Secretary in paragraph 1 of his note at pages 33-34 ~~ante~~ above.

.....
3-7-48

** **

Development.

3. For the recovery of the part of the loss from Dr.B.Viswanath, the then Director of Agriculture, Finance consider that it can be done only by filing a civil suit against him. But they are of the view that there is no sufficient material on which a Civil Suit can be filed with any reasonable chances of success. Legal Department have agreed with Finance.

N.M.
7-7-48.

Development

As regards the case of Dr.Viswanath, the agreement for his contract is at flag (D). Except clause 9, there is not direct provision to make him liable for loss if any sustained during the contract. Finance may consider the question of amending the model contract form for contract officers to provide for a contigency like this in future.

N.M.
7-7-48.

Finance:

Development may send extracts to Finance separately with reference to B on page 37 above.

.....
6.8.48

Development Dept.

** ** ** **

3. After issue of the drafts, necessary extracts of the notes may be taken and sent to Finance Department as Requested by them at 'K' above.

sd.....
9-8-1948.

C.V.N.
10-8-48.

(True extracts.)

Finance E.I.

Please see the extracts on page 1-2 above.

2. In the existing model contract form prescribed in G.O. No. 196 Finance dated 28-5-37, adopted in in the agreement with Dr.Viswanath, Ex-Director of Agriculture, on page 49-51 c.f. of G.O. 3295 Development dated 27-7-44, there is no provision for the recovery from the officer on contract of any financial loss to Government due to the Officer's negligence. The proposal is to amend the model contract form to include such a provision. A draft amendment is submitted for approval. This may be sent to public for perusal and legal for scrutiny before circulation.

.....
15-10-48.

Public (Services) Department.

The draft order below may be perused and the file passed on to Legal.

sd.....
20-10-48

Legal Department.

The alterations indicated in red ink on the draft order may be made.

sd.....
29-10-48

Finance.

The draft order may issue.

B.G.R 9.11.48. sd. 9/11/48

Hon'ble Minister
Finance.

Issue.

xxxxx.

(True copy)

Food (A)

Sub: Food grains - Imported food grains received at several ports in the Province - Agreement entered into with forwarding agents. - Recovery of sums due to the Provincial Government as arrears of land revenue.

Ref: Development department's U.O.Note dated 1-10-48.

In a Development Department's file the Legal Department have stated that section 52 of the Revenue Recovery Act provided that all sums due to the Provincial Government including compensation for any loss or damage sustained by them in consequence of a breach of contract may be recovered in the same manner as arrears of land revenue under the provisions of that Act, unless, the recovery thereof is otherwise specially provided for. The above opinion of the Legal Department has been communicated to all the Departments of the Secretariat to consider the possibility of inserting an additional clause making the amounts due to the Government recoverable as if they were arrears of land revenue in as many forms of contracts leases etc. as possible, to save the Government the botheration of having to go to a court of Law.

This section is concerned with the agreement entered into by the Government with the clearing and forwarding agents appointed at several ports in the Province. The form of the said agreement (approved by the Government recently) is at page 9-14 c.f./(M). The relevant clauses in the Agreement are clauses (12) and (13) at page 13 c.f.(M). Clause (12) provides that in cases of breach of the agreement, it shall be lawful for the Government if they shall think fit, in addition and without prejudice to any other rights and remedies of the Government consequent on such breach (1) to forfeit the deposit of Rs. 1000/- or such part thereof as the Government may deem fit (2) to terminate the agreement. Clause (13) provides that any dispute between the Secretary to the C.C.S.(representing the Government) and the Agent relating to the agreement shall be referred to arbitration to such person as the Government may appoint on that behalf and the award of such arbitrator shall be final

The question now for consideration is whether an additional clause should be inserted so as to make the amounts due to the Government towards loss or damage sustained by them in consequence of the break of the agreement recoverable as arrears of land revenue. It may be mentioned in this connection that in the year 1939 while amending section 52 of the Revenue Recovery Act 1864 for providing for the recovery of all sums due to the Provincial Government including compensation for any loss or damage sustained by them in consequence of a breach of contract, the Government issued specific executive instructions in G.O.2111 Revenue dated 17-8-39 that it was not intended, however, that the provision should be used to recover compensation or damage for a breach of contract with the Government where the contract itself did not specifically provide for the payment of any specified sum as compensation or damage, as such recovery would amount to the Government constituting themselves as judges of the dispute between themselves and a private party. Please see the discussions in the printed notes fe from X on page 13 n.f. to 20 n.f./(A) leading to the issue to th of the above executive instructions.

The agreement in question does not provide any specified sum as compensation or damage for breaches of the agreement. It is not also possible to specify any sum in the contract as compensation or damage for breaches of the agreement as it will bevarying according to the nature of the breach. Therefore in the case of the Government's agreement

with the forwarding agents, the agent additional clause suggested by Finance for making the amounts due to the Government recoverable as if there are arrears of land ~~rev~~ revenue, cannot be inserted as it will be going against the orders issued in G.O.No. 2111 Revenue dated 17-8-39. No action therefore appears called for in respect of the agreement entered into ith the ~~few~~ forwarding and clearing agents Revenue, Legal and Finance may see for remarks.

XXXXX.
4-11-48.

** ** ** ** **

Why not include in the same category contracts or agreements entered with millers, paddy merchants and other procuring agents appointed under the Intensive Procurement Order?

XXX
5-11-48.

'M' above

Submitted that the terms and conditions of the agreement to be executed by the authorised wholesale distributors (procuring agents) provide only for the forfeiture of the sum of Rs. 5000/- initially deposited with the District Supply officer for breach of any of the provisions, regulations and duties specified in the agreement regarding the purchase, storage and sale of food grains prescribed from time to time under the Intensive Procurement order - vide paragraph 21 of page 11 and Appendix IV at page 21 of the Pamphlet on "Intensive procurement Instructions." The agreement does not, however, provide any specified sum as compensation or damage for a breach of any or all of the terms of the agreement and is therefore in the same category as the agreement referred to in the Notes at page 1-4- above.

The form of contract entered into by the District Supply officer with the merchant for the supply of paddy and Rice is at page 9.15 c.f. of (B). The relevant clauses are clauses (3) and (7) and (8) on page 11 and 15 c.f. of (B). In this case also no amount has been specifieally provided towards payment of compensation or damage and the suggestion of the Finance at 'B' on page 2 ante cannot be given effect to.

XX
9-11-48.

Clauses 3 and 6(ii) refer to damage etc. due under the contract. Under clause 7 ~~of~~ the G.P.O. can adjust these out of the deposit. If in any particular case, the damages exceed the amount deposited, is it desirable to have a special provision on the lines now contemplated. I don't think the fact that no amount is specified in the contract need stand in the way. Legal may advise.

XX
10-11-48. Ref/Legal/Fin.

** ** ** ** **

Legal Department.

When it is claimed on behalf of Government that they are entitled to recover damages for breach of a contract, ~~tow~~ two questions will arise; (i) What is the quantum of damages? (ii) How should it be recovered? The Revenue Recovery Act deals only with the second question and not the first. It enables the Government to utilise the summary procedure of the Act to recover an amount which it has been ascertained is due to them as compensation. It does not enable Government to assess the damage arising from the alleged breach. The view of the Food Secretary appears to involve the assumption that the power to recover the amount in a particular manner includes the power to determine what that amout is. But this is not so. In the absence of agreement, the quantum

quantum of damages can be fixed only either by the court or by an aibitrator or by some other properly constituted authority. In view of this, it would not be possible to give effect to the intention of the Food Secretary.

Finance (AA) Dept.

The case deals with the possibility of inserting an additional clause in the agreements relating to the Fodd Department making the amounts due to the Government for breach of the Agreements, recoverable as if they were arrears of land revenue. According to G.O.No. 2111 Revenue dated 17-8-39 the provisions of the Revenue Recovery(Amendment) Act are not applicable, to the cases where the contracts do not provide for the payment of any specified sum, as compensation or damage. Accordingly it does not seem possible to embody the additional clause in question in Food Department's agreements.

GKG 20-12-48 T.N.S.R. 20-12-48

Finance (Accounts.A.) Department.

Memo No.92363(A)-AA48-2, dated 19-11-1948.

Sub: Local Fund Accounts Department - Recruitment of clerks and District Inspectors of Local Fund Accounts Training - Form of Agreements - Modification.

Ref: G.O.No.554, Finance, dated 19-10-1944.
97 " " 5- 9-1945.
50 21-5-1948.

Section 52 of the Madras Revenue Recovery Act (Act II of 1864) provides that all sums due to the Provincial Government including compensation for any loss or damage sustained by them in consequence of a breach of a contract may be recovered in the same manner as arrears of land revenue under the provisions of that Act, unless the recovery thereof is otherwise specially provided for. The Government are advised that there is no legal objection to the insertion of a clause in the agreement to be executed by an apprentice or a trainee that any sums which become due by him to Government due to his failure to observe the conditions of the agreement will be liable to be recovered as arrears of land revenue under Madras

Act. II of 1864.

2. It is considered that an additional clause on the lines ~~metha~~ mentioned above may be inserted in the form of the agreement prescribed in G.O. 502, Finance dated 21-5-48 for the apprentices selected for training in the Local Fund Audit Department. The Exami er of Local Fund Accounts is accordingly requested to send a draft of the amendment to be made for the approval of the Government.

It is presumed that no specific form of agreement has been prescribed in the case of candidates recruited as clerks in the Local Fund Audit Department who have to undergo a preliminary course of Instruction. The Examiner is requested to submit a copy of the agreement which he is now using in respect of these candidates and to suggest a suitable amendment to that form also.

T.N.S.R.
27/10

To The Examiner of Local Fund Accounts.

Finance (Accts.A)Dept.

Please see the extract of notes on pages 1-2 c.f.

This section is concerned with the Local Fund Audit Dept.

2. Under Rule 6 of the Special Rules of the Madras Local Fund Audit Subordinate Service (i-e. District Inspector of Local Fund Accounts), a candidate for appointment by direct recruitment to the service is, in the first instance, recruited as an apprentice temporarily for a period of three years. He should undergo training in all branches of work pertaining to the Department and should pass the S.A.S.Examination within not more than ~~tew~~ two consequent examinations held within three years after the date of his appointment as an apprentice. The candidate selected as an apprentice should, before undergoing the prescribed training, execute an agreement in the form at page 31-37 c.f. of G.O.No. 502 and 503 Finance dated 21-5-48 with two surities binding himself:-

(a) to undergo training for a period of three years;

(b) to serve in the Local Fund Audit Department as Inspector for a minimum period of three years on duty from the date of his first appointment as

an Inspector after passing the Subordinate Accounts Service Examination;

(c) to serve in the Local Fund Audit Department as a clerk for a minimum period of three years on duty, if he fails to pass the Subordinate Accounts Service Examination completely within the prescribed period, and if he is offered the ~~new~~ post of a clerk in the Local Fund Audit Department; and

(d) in case he fails to fulfil any of the aforesaid conditions, to refund to the Provincial Government the total amount drawn by him as pay and allowance, excluding travelling allowance, while under training as an apprentice."

3. If a certain apprentice fails to fulfil any of the conditions referred to in items (a), (b) and (c) in para 2 above and also fails to refund the amount drawn by him during the training and repayable by him to the Govt. under the terms of the agreement executed by him in the form as it now stadns, the Govt. will have to go to a Court of Law to enforce the refund of the amount due. The Legal Dept. have stated that there is no legal objection to insert a clause in the agreement that the sums repayable by the trainee are liable to be recovered as arrears of land revenue under Madras Act II of 1864. Such provision would obviate the need for going to a Court of Law to enforce the refund of the money. A clause as suggested by Legal may be inserted in the form of agreement prescribed in G.O.No.502, Fin. dt. 21-5-48, The Examiner of Local Fund Accounts, may be asked to suggest an amendment to the form of agreement.

4. Under the orders issued in G.O.554, Fin. dt. 19-10-44 as amended by G.O.974, Fin. dt. 5-9-~~44~~ a candidate recruited as a clerk to the L.F.Accounts Deptt. will be required undergo a course of instruction for three months in Madras (a separate class should be opened for this purpose and conducted in coordination with similar classes held in the A.G's office, Madras) and a further course of practical training for one month in a Dt. Audit Office. Each candidate must execute an agreement in proper form with two sureties binding himself--

(a) to undergo a course of instruction for three months in Madras and a course of practical training for one month in a Dt. Audit Office;

(b) to undergo such further course of instruction and training, as the Examiner may consider necessary;

(c) to serve the Local Fund Audit Deptt. for such period as may be prescribed by the Examiner, not exceeding three years from the date of first appointment as special grade clerk; and

(d) in case he fails to fulfil any of the above conditions, to refund to the Govt., the total amount drawn by him as stipends and allowances during the period of training.

It does not appear that any special form of agreement was prescribed by this Dept. in the case of clerks as in the case of Dt. Inspectors. Presumably, the Examiner has been using with suitable modifications the form of agreement prescribed by the Public Deptt. (in respect of clerks who were given training in the clerks' Training school)

p.t.o.

in G.O.1908, Public(Genl.C) dated 7-9-46. However, the correct position may be ascertained from the Examiner. He may be asked to submit a copy of the form which he is using and also to suggest suitable amendments to the form so as to provide that the amount of money liable to be repaid by the trainee are liable to be recovered as arrears of land revenue under Madras Act II of 1864.

5. A draft memo if put up with reference to paras 3 and 4 above. Public (Ser.) may see before issue.

G.K.G./26-10-48.

T.N.S.K./27-10-48.

Pub (Ser) Deptt.

*

Finance (A.A) Deptt.

Please see the note of Pub (Ser) on p. 5 above. With reference to their notes, relevant extracts from this file may be given to Fin (E.I). The Draft memo below may be issued.

G.K.G./19-11-48.

/Issued as Memo No.92363(A)-AA/48-2, dt. 19-11-48)

C.No.4267/7-12-48.

Fin.(E.I)

Please see the extract of notes on pp.3-5 above.

Recently at the instance of Devt. an amendment to the model form of agreement in G.O.196 Fi., dt. 28-5-37 to enforce recovery from the officer on contract of any financial loss to Govt. due to his negligence--Vide G.O.1059 Fin. dt. 16-11-48.

2. In the light of the remarks overleaf it would seem desirable to include provision in clause 4 of the model form as at 'Z' overleaf.

Clause 4 A of the model form in Annexures I and III may be amplified as hereunder--

"4.A. If due to the misconduct or negligence of the party of the first part, the Govt. sustain any loss or damage, the amount of such loss or damage shall be made good by the party of the first part failing which it shall be liable to be recovered as if it were an arrear of land revenue"

3. Pub.(Ser) and Legal may see whether 'A' above may be adopted.

B.C

Sd. x x/3-12-

Fin.U.O.10367Ø(A)EI/3-12-48.

/with linked file/

Pub(Ser)Deptt.

--

Pub.(Ser)Deptt.

Draft rule 4 A of the model form in Annexures I and III above may be accepted and the file passed on to Legal.

Sd. x x

9-12-48.

Pub.(Ser.A) U.O.No.4267/48-1, dt. 10-12-48.

Legal Department.

The alterations indicated in blue pencil on new clause 4-A suggested above may be made.

Sd. x x
15-12-48.
Legal 14342/17-12-48.

Fin.(E.I) Deptt.

Please see the further remarks of Pub. and Legal. on p.6 above.

2. In the case of agreements relating to the Food Deptt. Legal said that a provision providing for recovery of Govt. dues as if they were arrears of land revenue cannot be made unless the amount payable as compnesation is specified in the contract - Please see portion K on p.2 and also p.3 of the extracts of note put up at flag (T). In the present case, clause 4.A of the model form of contract only provides that "if due to the misconduct or negligence of the party of the first part, the Government sugtain any loss or damage, such loss or damage shall be made good by the party of the first part" and does not SPECIFY the amount of loss or damage payable. In the circumstances, Legal may see again for remarks, as to whether it will be in order to insert the additional clause at 'A' on p.6 above in the model form of agreement, making the amounts due to the Govt. recoverable as if they were arrears of land revenue.

Sd. x x24-1-49. Sd. x x 24-1
D?S:

Fin.U.O.103670 A.El-2,
dt.24-1-49.

Legal Deptt.

As the validity of a provision for the recovery as arrears of land revenue of the amount of loss or damage payable when it is not an ascertained sum, is not free from doubt, the proposal to add the words "failing which it shall be liable to be recovered as if it were an arrear of land revenue" at the end of new clause 4-A (recently inserted by G.O.Ms.No.1059, Fin., dt. 16-11-48) need not be pursued. It may be added that if the amount is an ascertained sum, then recourse may be had to section 52 of the Madras Revenue Recogery Act, 1864, even though there is no provision in the agreement for the recovery of the amount as an arrear of land revenue.

Sd x x /12-2-49.

Legal U.O.No.837/49-1
dt.14-2-49.

Fin.(E.1)

Previous Fin. note on p. 7 above and the further note of Legal Deptt. may be perused. In the circumstances, now stated by Legal Dpet. no further action seems called for. The draft order below need not issue and the papers stitched with G.O.1059,Fin.dt.16-11-48.

Sd. x x /16-2-49. Sd. x x/17-2.
D.S.

/True copy/

Office Assistant,
Madras Record Office.